

EXHIBIT E

1

7A5AAWESC Conference

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ISHA WESTERN,

Plaintiff,

v.

07 CV 6247 (PKC)

AMERIPATH, INC. ET. AL.,

Defendants.

-----x

New York, N.Y.
October 5, 2007
12:00 p.m.

Before:

HON. P. KEVIN CASTEL,

District Judge

APPEARANCES

JACKSON LEWIS LLP

Attorneys for Defendants Ameripath

BY: MICHAEL FRANKEL

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1 (Case called)

Ameripath, 2 MR. FRANKEL: Michael Frankel, representing

3 your Honor.

we 4 THE COURT: All right. Let me just review where

5 are. The claim of Ms. Isha Western was transferred to this
6 court from the Southern District of Texas on July 6. On

that 7 date I set a conference for this action of July 27. At the
8 request of a Mr. Craner who was considering entering a

notice 9 of appearance for Ms. Western, I adjourned the conference
for

10 September 21. On September 21 counsel for the defendant
11 appeared. There was no appearance by Ms. Western or by any
12 attorney on her behalf. I issued an order dated September

21 13 giving Ms. Western one final opportunity to appear. Set
the

14 matter for a hearing in conference for today.

15 In bold face solid caps my order reads:

16 Ms. Western, you are advised that your failure to
17 appear in courtroom 12C on October 5, 2007 at 11:45 a.m.

either 18 in person or by attorney admitted to practice in this court
who

19 has first filed a notice of appearance will be deemed a
failure

20 to prosecute this action and will result in a dismissal of
your

21 case.

22 Dismissal means that your lawsuit will be over and
23 that you will receive no relief or recovery.

order 24 I directed that the clerk mail the copy of the

25 in a specified fashion, and the docket sheet reflects "The
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1 clerk's office has mailed copies". And that's docket entry
2 number 8.

3 What, if anything, can you tell me, Mr. Frankel?

Have

4 you heard anything from Ms. Western?

from

5 MR. FRANKEL: No, your Honor, we haven't heard

6 Ms. Western, Mr. Ahmed or Mr. Craner since the last court
7 conference on September 21.

then?

8 THE COURT: All right. What is your application

to

9 MR. FRANKEL: We move since Ms. Western has failed

failure

10 appear that the Court dismiss Ms. Western's claim for

11 to prosecute pursuant to Section 41 of the Federal Rules.

to

12 THE COURT: What I am going to direct you to do is

served

13 file a motion and obviously the motion will have to be

14 and I will then decide the motion.

your

15 Now, explain to me, if you will, in the event that
16 circumstances were to arise which would cause me to deny

me

17 motion, perhaps, some new development, you have written to

Plains

18 asserting your belief that this case should be in White

19 could you please expand on that a little further.

in

20 MR. FRANKEL: Yes, your Honor. Ms. Western was
21 employed in Ameripath's Portchester office which is located

indicated

22 Westchester County. We believed at the time she filed this
23 lawsuit she was a resident of New Jersey. Mr. Craner

connection

24 she currently resides in Georgia. The case has no

we

25 to New York City and pursuant to the local rules 21 and 22

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1 think the case should be transferred to White Plains for
2 purposes there as the defendant resides in White Plains and
3 Ms. Western is not a resident of New York.
4 THE COURT: All right. So the defendant resides
in
5 White Plains and not in New York County or the Bronx
County; is
6 that correct?
7 MR. FRANKEL: Yes, your Honor. In Portchester, in
8 Westchester County.
9 THE COURT: All right. So what you should do when
you
10 file your motion papers is seek that as the alternative
relief.
11 But based on what I have heard here today, unfortunately, I
may
12 be required to dismiss this case for failure to prosecute.
I
13 am going to require you to purchase a copy of the
transcript
14 and to annex a portion or annex the transcript to your
motion
15 papers so that Ms. Western will be able to read what
transpired
16 today.
17 MR. FRANKEL: Yes, your Honor.
18 THE COURT: And you may file your motion by
October
19 19. Is that convenient?
20 MR. FRANKEL: Yes, your Honor, that's fine.
21 THE COURT: Any response to the motion will be due
by
22 November 2 which is a lengthy period of time. It will be a
23 full two weeks and it is to be served and filed by November
2.
24 If there is a response then the reply will be due November
9.
25 If there is no response then I will direct that you write a
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1 letter to the Court advising that there's been no response.

2 MR. FRANKEL: Yes, your Honor.

3 THE COURT: Well, thank you very much. Sorry to

drag

4 you in.

5 MR. FRANKEL: Not a problem. Thank you.

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